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March 13

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CONCORD, N.H.

Dr. John Samuel Wheeler
State Health Officer
State Department of Health
State House
Concord, New Hampshire

Dear Dr. Wheeler:

In reference to your letter of February 27, 1956, it is the opinion of this office that the State Board of Health, designated as the sole agency for The State of New Hampshire, has all the necessary authority to participate fully in the medical facilities program established by subchapter IV - Construction of Hospitals - U.S.C.A., Title 42, Section 291. This authority is granted to the State Board of Health under the provisions of RSA 152 which includes the following powers.

1. To make inventories of existing hospitals, surveying the need for construction and development of a program of hospital construction, including public, non-profit and proprietary hospitals.
2. To develop a program for the construction of such public and other non-profit hospitals as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic and similar services to all the people of the state.
3. To provide such methods of administration, and take such other action as may be necessary to comply with the requirements under the federal government and regulations thereunder.

The definition section of RSA 152 which includes definitions of the words hospital, public health center and non-profit hospital, is considered to include nursing homes which are not engaged in primarily furnishing domiciliary care, rehabilitation facilities operated in connection with a hospital and rehabilitation facilities operated independently of a hospital. It appears that such rehabilitation facilities could well furnish either in-patient service or out-patient

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service and still come under the control of the State Department of Health under the provisions of RSA, chapter 151.

Diagnostic and treatment centers for ambulatory patients, if operated by a non-profit hospital, are considered to be related facilities of the hospital and if operated by a public agency would be within the definition of public health center as contained in said chapter. It is also considered that the term diagnostic or treatment center, in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the state, could be considered as under the supervision of the State Department of Health because of the licensing law.

It is recognized that the amendments to the federal law have not been specifically incorporated into the Hospital Survey and Construction Law of this state, however, as a practical matter, some of the additions to the federal law do not appear to be important as far as New Hampshire is concerned inasmuch as the State is limited in the assistance it may receive and the State plan is aimed at assisting established hospitals and rehabilitation centers. While our particular law refers to institutions which maintain and operate organized facilities it was designed to cover any eventuality. The establishment of private agencies not connected in any way with existing hospitals or clinics is practically impossible without financial assistance as gifts or the establishment of trusts. In this eventuality a non-profit corporation would most certainly be the result and therefore covered by the hospital licensing law.

Very truly yours,

Arthur E. Bean, Jr.
Assistant Attorney General

AEB,Jr/T